PENGARAH TANAH DAN GALIAN NEGERI KEDAH & ANOR

v.

EMICO DEVELOPMENT SDN BHD

COURT OF APPEAL, KUALA LUMPUR
GOPAL SRI RAM JCA
SITI NORMA YAAKOB JCA
MOKHTAR SIDIN JCA
[CIVIL APPEAL NO: K-01-21-1998]
14 OCTOBER 1999

LAND LAW: *Acquisition of land - Award - Inquiry by Land Administrator - Failure to serve Form E notice to purchaser of land - Whether award and inquiry could be declared null and void - Whether award could be quashed - Land Acquisition Act 1960, ss. 10, 11, 12*

LAND LAW: *Acquisition of land - Award - Time for making award - Whether to be made within two years of declaration in Gazette - Failure to make award within two years - Whether declaration lapsed by effluxion of time - Whether fatal - Land Acquisition Act 1960, ss. 8(1), 8(4)*

This was an appeal against the decision of Alauddin J quashing the acquisition by the appellants of a piece of land in Sungei Petani, Kedah ('the land'). On 8 May 1995, the respondent entered into an agreement with the registered proprietors of the land in order to purchase the property. On 3 August 1995, the first appellant caused to be published in the Gazette a declaration compulsorily acquiring the land. The appellants then issued Form E notice under the Land Acquisition Act 1960 ('the Act') informing the public and the proprietors that an inquiry was to be held on 18 October 1995. The Form E notice, though served on the registered proprietors, was not however served on the respondent. Be that as it may, the representative of the registered proprietors attended the inquiry ('the first inquiry'), and the Land Administrator issued Form H notice and made an award for the acquisition ('the first award').

The respondent alleged that the first award was null and void for non-service of Form E notice, and applied for *certiorari* to have the award quashed ('the first application'). On 3 August 1996, Mohd Ariff J allowed the application and quashed the first inquiry and the first award. The learned judge also issued mandamus directing a second inquiry before the Land Administrator for the purpose of making a fresh award. And so, following the orders, a second inquiry was held on 4 August 1997 and a second award was made on 6 August 1997. In the meanwhile, on 24 October 1996, the respondent had registered itself as proprietor of the land.

Following the second award, the respondent commenced proceedings before Alauddin J ('the second application') to have the acquisition of the land quashed. *Inter alia*, the respondent argued that the second award, made as it were on 6 August 1997, came more than two years after the Gazette declaration of 3 August 1995, and that being so, it was invalid bearing in mind the plain language of s. 8(4) of the Act. The learned judge, subscribing to the argument, quashed the acquisition of the land. Hence, this appeal by the appellants.

Held:

Per Gopal Sri Ram JCA (Siti Norma Yaakob JCA concurring)

[1] A declaration under s. 8(1) of the Act lapses and becomes ineffective by effluxion of time if no award is made within two years from the date of its publication in the Gazette.

[2] In the present case, the two-year period commenced to run from 3 August 1995. Although the first award was made within the statutory time limit, the quashing of the first inquiry and the resultant award by the orders of *certiorari* issued by Mohd Ariff J resulted in there being no award at all. Consequently, it was incumbent upon the second appellant to have an inquiry and make an award before the expiry of two years from 3 August 1995, being the date of publication of the declaration. In other words, the award ought to have been made on or before 3 August 1997.

[3] The second award, the only valid award in this case, was made on 6 August 1997. This was more than two years after the date of the declaration. It follows that the declaration made under s. 8(1) of the Act lapsed and ceased to have any effect as at 3 August 1997, because no valid award has been made before that date. Alauddin J was therefore correct in quashing the second award by means of *certiorari.*

Per Mokhar Sidin JCA (dissenting)

[1] The challenge to the first inquiry and the first award was solely on the ground that the respondent was not served with the Form E notice of the said first inquiry. The relevant provisions in respect of this are ss. 10, 11 and 12 of the Act.

[2] It is clear that when the acquisition took place the respondent could not come under ss. 11(a), (b) or (c) of the Act. As such there was no obligation on the part of the Land Administrator to serve the Form E notice on the respondent. The respondent, therefore, had no right to complain of non-service of the notice. The respondent had no *locus standi* when the acquisition took place and as such had no right to file the first application.

[3] At the time when the acquisition took place on 3 August 1995 and on the date the first inquiry was held on 18 October 1995, the respondent was not the registered proprietor of the land. There was also no evidence that the respondent was the occupier of the land when the first application or even at the time the second application was made. The respondent, having no registered interest in the land, had no *locus standi* to challenge the acquisition and could not bring the first application and the second application.

[4] Under the Act, the court has no power by virtue of s. 56 to declare an inquiry and the award made thereunder to be null and void solely on the ground of non-service of Form E. At the most non-compliance will render the inquiry to be irregular and the award made thereunder ought to be set aside for which a fresh inquiry to be held. And so, assuming that the respondent had a registered interest in the land, still, under the Act, non-service of Form E could not invalidate an award.

[5] The time to hold the fresh inquiry should run from the date when the court declared the first inquiry and the award made thereunder to be irregular, ie on 3 August 1996. Thus when the fresh inquiry ie the second inquiry was held on 3 August 1997, adjourned to 4 August 1997 and the second award handed down on 6 August 1997, all those were done and completed within the time limit. In any case, assuming that the order of the learned judge in the first application was effective, this is a fit and proper case for the court to use its dicretion not to declare the acquisition null and void.

[6] After the judge in the first application declared the award to be null and void, the respondent took the necessary actions to ratify the sale. This the respondent could not do because the acquisition was still effective and valid. In the result, the respondent had no *locus standi* to make the applications herein and the appeal ought to be allowed.

[Appeal dismissed by majority decision.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Ini adalah rayuan terhadap keputusan Alauddin H yang membatalkan pengambilan sebidang tanah oleh perayu di Sungei Petani, Kedah ('tanah'). Pada 8 Mei 1995 responden telah memeterai suatu perjanjian dengan pemilik berdaftar tanah bagi tujuan membeli hartanah tersebut. Pada 3 Ogos 1995, perayu pertama telah membuat perisytiharan di Gazette bagi pengambilan wajib tanah. Perayu kemudiannya mengeluarkan notis Borang E di bawah Akta Pengambilan Tanah 1960 ('Akta') memberitahu orang ramai dan pemilik

berdaftar bahawa suatu siasatan akan dilakukan pada 18 Oktober 1995. Notis Borang E, walaupun diserahkan kepada pemilik berdaftar, bagaimanapun tidak diserahkan kepada responden. Namun begitu, wakil pemilik berdaftar telah hadir ketika siasatan ('siasatan pertama'), dan Pentadbir Tanah telah mengeluarkan Borang H dan memberi pampasan bagai pengambilan ('pampasan pertama').

Responden mengatakan bahawa pampasan pertama adalah batal kerana ia tidak diserahkan dengan Borang E, dan memohon *certiorari* bagi membatalkan pampasan ('permohonan pertama'). Pada 3 Ogos 1996, Mohd Ariff H membenarkan permohonan dan membatalkan siasatan pertama dan pampasan pertama. Hakim bijaksana juga mengeluarkan mandamus memerintahkan siasatan kedua di hadapan Pentadbir Tanah bagi tujuan membuat pampasan baru. Dan dengan itu, ekoran perintah-perintah tersebut, siasatan kedua dibuat pada 4 Ogos 1997 dan pampasan kedua dibuat selepas itu pada 6 Ogos 1997. Sementara itu, pada 24 Oktober 1996, responden telah mendaftarkan diri mereka sebagai pemilik tanah.

Berikutan pampasan kedua, responden memulakan prosiding di hadapan Alauddin H ('permohonan kedua') bagi membatalkan pengambilan tanah. Antara lain, responden berhujah bahawa pampasan kedua, yang dibuat pada 6 Ogos 1997, dibuat lebih dua tahun dari tarikh perisytiharan di Gazette pada 3 Ogos 1995, dan ianya dengan itu tidak sah mengambilkira perbahasaan jelas peruntukan s. 8(4) Akta. Hakim bijaksana, menyetujui hujah, membatalkan pengambilan tanah. Perayu dengan sebab itu merayu.

Diputuskan:
Oleh Gopal Sri Ram HMR (Siti Norma Yaakob HMR menyetujui)

[1] Perisytiharan di bawah s. 8(1) Akta akan luput dan menjadi tidak berkesan kerana keluputan masa jika tiada pampasan dibuat dalam tempoh dua tahun setelah perisytiharan tersebut diterbitkan di Gazette.

[2] Dalam kes semasa, tempoh dua tahun bermula dari 3 Ogos 1995. Walaupun pampasan pertama dibuat dalam tempoh hadmasa statutori, pembatalan siasatan pertama dan pampasan berikutnya oleh perintah *certiorari* yang dikeluarkan Mohd Ariff H menyebabkan tiada apa-apa pampasan wujud. Dengan demikian, ianya menjadi tugas perayu kedua untuk melaksanakan siasatan kedua dan memberi pampasan sebelum berakhirnya tempoh dua tahun dari tarikh 3 Ogos 1995, yang merupakan tarikh penerbitan perisytiharan di Gazette. Dalam ertikata lain, pampasan harus dibuat pada atau sebelum 3 Ogos 1997.

[3] Pampasan kedua, satu-satunya pampasan yang sah di sini, dibuat pada 6 Ogos 1997. Ini lebih dari dua tahun selepas perisytiharan. Ianya mengikut bahawa perisytiharan yang dibuat di bawah s. 8(1) Akta telah luput dan tidak mempunyai apa-apa kesan setakat 3 Ogos 1997, sebab tiada pampasan sah dibuat sebelum tarikh tersebut. Dengan itu Alauddin H adalah betul bilamana membatalkan pampasan kedua melalui *certiorari*.

Oleh Mokhtar Sidin HMR (berlainan pendapat)

[1] Bantahan terhadap siasatan pertama dan pampasan pertama adalah semata-mata atas alasan bahawa responden tidak diserahkan dengan notis Borang E berhubung siasatan pertama tersebut. Peruntukan-peruntukan yang relevan berkaitan ini ialah ss. 10, 11 dan 12 Akta.

[2] Adalah jelas bahawa apabila pengambilan tanah dibuat responden tidak boleh berada di bawah s. 11(a), (b) atau (c) Akta. Oleh itu tiada kewajipan di pihak Pentadbir Tanah untuk menyerahkan Borang E ke atas responden. Responden, dengan itu, tiada hak untuk membantah tentang ketiadaan penyerahan notis tersebut. Responden tiada *locus standi* sewaktu pengambilan dilaksanakan dan dengan itu tiada hak untuk memfail permohonan pertama.

[3] Sewaktu pengambilan dilaksanakan pada 3 Ogos 1995 dan pada tarikh siasatan pertama dibuat pada 18 Oktober 1995, responden bukanlah pemilik berdaftar tanah. Juga tiada keterangan bahawa responden adalah penghuni tanah apabila permohonan pertama ataupun permohonan kedua dibuat. Tanpa menjadi pemilik berdaftar tanah, responden tiada *locus standi* untuk membantah pengambilan dan tidak boleh memulakan permohonan pertama atau permohonan kedua.

[4] Di bawah Akta, disebabkan s. 56nya, mahkamah tiada kuasa untuk mengisytihar sesuatu siasatan atau pampasan itu batal dan tak sah semata-mata atas alasan ketiadaan penyerahan Borang E. Paling kuat ketiadaan penyerahan akan menyebabkan siasatan menjadi luar aturan di mana pampasan yang dibuat perlu diketepikan dan satu siasatan baru dimulakan. Oleh yang demikian, jikapun diandaikan bahawa responden mempunyai kepentingan berdaftar di dalam tanah, di bawah Akta, ketiadaan penyerahan masih tidak boleh membatalkan pampasan.

[5] Masa untuk mengadakan siasatan baru harus bermula dari tarikh mahkamah mengisytihar siasatan pertama dan pampasan sebagai luar aturan, iaitu pada 3 Ogos 1996. Dengan itu, apabila siasatan baru, ie siasatan kedua diadakan pada 3 Ogos 1997, yang ditunda ke 4 Ogos 1997 dan pampasan kedua diberikan pada 6 Ogos 1997, kesemua ini dibuat dan disempurnakan dalam tempoh hadmasa. Walauapapun, diandaikan bahawa

perintah hakim bijaksana dalam permohonan pertama berkesan, kes ini adalah kes yang sesuai bagi mahkamah menggunakan budibicara untuk tidak mengisytihar pengambilan tanah batal dan tak sah.

[6] Selepas hakim dalam permohonan pertama mengisytihar pampasan sebagai batal dan tak sah, responden telah mengambil langkah-langkah perlu untuk menyempurnakan penjualan tanah. Ini tidak boleh dilakukan oleh responden sebab pengambilan masih lagi berkesan dan sah. Akibatnya, responden tiada *locus standi* untuk membuat permohonan-permohonan di sini dan rayuan harus dibenarkan.

[Rayuan ditolak melalui keputusan majoriti.]

Case(s) referred to:
Pemungut Hasil Tanah Kuantan v. Oriental Rubber & Palm Oil Sdn Bhd [1986] 1 MLJ 39 ***(refd)***
Pemungut Hasil Tanah, Pulau Pinang v. Ong Gaik Kee [1983] 2 MLJ 35 ***(refd)***

Legislation referred to:
Land Acquisition Act 1960, ss. 8(4), 10, 11(1)(a), (b), (c), 12, 14(1), 56

For the appellants - Roslan Abu Bakar SFC
For the respondent - V Arivanandham; M/s Cheong Wai Meng & Van Buerle

[Appeal from High Court, Alor Setar; Originating Motion No: 25-25-97]

Reported by WA Sharif

JUDGMENT

Gopal Sri Ram JCA:

This appeal is brought against orders of *certiorari* and other consequential relief granted by Alauddin J, in the High Court at Alor Setar, quashing the compulsory acquisition by the appellants of a piece of land held under Lot 284, in the Mukim of Sungei Petani ("the said land"). The facts and background against which this appeal rests are as follows.

At all times material to this appeal, one Muthukaruppan Chettiar and two others were the registered proprietors of the said land. On 8 May 1995, the respondent company entered into a written agreement with the registered proprietors of the said land to purchase it from them at a sum of RM18,915,000. Following the agreement, the respondent, for the purpose of protecting its interest pending completion of the sale, entered a caveat against the register document title to the said land. Some three months later, on 3 August 1995, the first appellant caused to be published in the Gazette, a declaration compulsorily acquiring the said land on behalf of the Permodalan

Kedah Berhad for a commercial purpose. This was followed by an inquiry held on 18 October 1995 ("the first inquiry") on the award of compensation for the acquisition. On the same date, that it to say, 18 October 1995, the second respondent issued a notice in the statutory Form H under s. 16 of the Land Acquisition Act 1960 ("the Act") setting out the award of compensation. Neither notice of the first inquiry nor of the award was given to the instant respondent. By two originating motions the registered proprietors and the respondent moved separately to have the first inquiry and the award quashed by *certiorari.* By an order made under each application on 3 August 1996, Mohd Ariff Othman J, issued *certiorari* quashing the first inquiry and the award of compensation made by the second respondent. He also issued mandamus directing a second inquiry for the purpose of making a fresh award. Following the making of these orders, a second inquiry was held on 4 August 1997 and a second award of compensation was made on 6 August 1997. The respondent then commenced the proceedings which form the subject matter of the present appeal. It may be added for completeness that on 24 October 1996, that is to say, between the making of the relevant orders by Mohd Ariff Othman J, and the date of the second award, the respondent had itself registered as proprietor of the said land.

In support of its application before Alauddin J, to have the acquisition of the said land quashed, the respondent relied on the provisions of s. 8(4) of the Act. It is not a provision which formed part of the Act when it was first passed. It was added much later, in 1984, by way of Act A575/84. Until its introduction, the delay occasioned by the relevant authority in compulsorily acquiring land was dealt with at common law according to the facts and circumstances of each case. See, *Pemungut Hasil Tanah, Pulau Pinang v. Ong Gaik Kee* [1983] 2 MLJ 35; *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn. Bhd.* [1986] 1 MLJ 39.

In order to appreciate the nature of the appellant's case as advanced in the court below and before us in this appeal, it is necessary to set out s. 8 in its entirety. This is what it says:

> 8(1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the Gazette.
>
> (2) A copy of the list of lands referred to in section 7(b), amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.
>
> (3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

(4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under section 14 (1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.

Having regard to the state of the common law when the fourth subsection was introduced by amendment, it is clear that Parliament intended to place a definite time limit within which the State Authority must act to effect an acquisition of land. The legislative purpose was obviously to put an end to uncertainty and protracted litigation resulting from long delays between the publication of a declaration in the Gazette and the making of an award of compensation. The position today is that a declaration under s. 8(1) lapses and becomes ineffective by effluxion of time if no award is made within two years from the date of its publication in the Gazette.

In the present case, the two year period commenced to run from 3 August 1995. Although the first award was made within the statutory time limit, the quashing of the first inquiry and the resultant award by the orders of *certiorari* issued by Mohd Ariff Othman J, resulted in there being no award at all. Consequently, it was incumbent upon the second appellant to have an inquiry and make an award before the expiry of two years from 3 August 1995, being the date of publication of the declaration. In other words, the award ought to have been made on or before 3 August 1997. However, the second award; the only valid award in the present case; was made only on 6 August 1997. This was more than two years after the date of the declaration. It follows that the declaration made under s. 8(1) of the Act in the present case lapsed and ceased to have any effect as at 3 August 1997 because no valid award had been made before that date. Alauddin J, was therefore entirely correct in quashing the second award by means of *certiorari.*

It is nevertheless argued by the appellants that notwithstanding the clear and imperative language of s. 8(4), this Court ought to hold the delay in the present case to be of no effect. In support of this argument, the learned senior federal counsel who appeared for the appellants relied on the decision of the Supreme Court in *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn. Bhd. (ibid)*. It was there held that an award made seven years after the publication of a declaration did not invalidate the acquisition. So, it was argued that the delay in the present case, which was only a few days beyond two years should not be held to invalidate the acquisition. The short answer to this argument is that both the declaration and the award in *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palmoil Sdn. Bhd. (supra)* were effected

before the coming into force of the time provision housed in s. 8(4) of the Act. It is a case decided under the law as it stood before Act A575/84 introduced the amendment to which I have already alluded. It has no relevance to the present case which falls squarely to be decided in accordance with the plain language of s. 8(4).

For the reasons already given, I would dismiss the appeal and confirm the orders made by the High Court. The appellants must bear the costs of this appeal. Since this is an appeal by Government, no question of a security deposit arises.

My learned sister Siti Norma Yaakob, JCA has seen this judgment in draft and agrees with the reasons and the conclusion stated therein.

Mokhtar Sidin JCA:

This is an appeal by the appellants against the decision of the learned judge of the High Court, Alor Setar who quashed the compulsory acquisition by the appellants of a piece of land held under Lot 284 Mukim of Sungei Petani, Kedah (hereinafter referred to as "the said land"). The facts and the background of this case leading to this appeal was that on 8 May 1995, the respondent entered into a sale and purchase agreement with the registered proprietors to purchase the said land for the sum of RM18,915,000. The total area of the said land was 335 acres 3 rood 36 pole. By then the State Government had already acquired an area of 15 acres 1 rood 25.84 pole leaving a balance of 320 acres 2 rood 10.16 pole. On 3 August 1995 by Gazette Notification No. 411 the State acquired another area of 138 acres 1 rood 20.80 pole. On 18 August 1995, which was after the Gazette, a supplementary agreement was entered between the respondent and the registered proprietors, whereby the respondent requested for extension of time to pay the balance of the purchase price of RM17,023,500 to be paid as follows:

(i) RM5,000,000 on or before 8 December 1995 with an extension of two months with interest at the rate of 6.8 per annum;

(ii) the final balance price to be paid six months from the date of the principal agreement, ie, 8 May 1995 or six months after the removal of the private caveat and the order of the High Court sanctioning the sale, whichever is later.

It was to be noted that the holder of the power of attorney, Rangu Ranganathan, was the one who represented the registered proprietors, those who had passed away and those were not in Malaysia. It was common ground between the parties that the holder of the power of attorney was also the lawful representative of the registered proprietors in Malaysia. He was also given the power to sell and execute all relevant documents on behalf of the registered

proprietors. On 19 September 1995, Form E notice under the Land Acquisition Act (hereinafter referred to as "the Act") was issued by the appellants informing the public and the registered proprietors that an inquiry was to be held on 18 October 1995. It was again common ground that the representative of the registered proprietors attended the inquiry whereby the Collector on that date made the award. Form H was issued, upon which the representative made his objection on 31 January 1996. It was also common ground that the respondent did not receive the notice of the inquiry.

Despite all necessary steps had been taken by the appellants to finalise the acquisition and the payment of compensation, the respondent went on to register the transfer under the sale and purchase agreement at the Land Office at Alor Setar. On 25 April 1996 by an Originating Motion No. 25-05-1996 (hereinafter referred to as "the first application"), the respondent commenced proceedings for:

(i) *certiorari* to quash the decision of the respondent in respect of the award; and

(ii) mandamus to order the respondent to hold an inquiry.

The learned judge then gave the order dated 3 August 1996.

In the first application it is clear to me that the main ground of complaint was that the respondent was not served with the Form E notice and it was also alleged that the registered proprietors were also not served. In the affidavit of reply the appellants averred that a representative of the registered proprietors attended the inquiry. There was no reply to this by the respondent indicating that it was acknowledged that a representative was present. As such there is no question that the registered proprietors were not present at the inquiry. It is rather unfortunate only the order but not the judgment of the learned judge on the first application was exhibited. Apparently, the order prayed for by the respondent was given on the ground that the respondent was not served with the Form E notice. It was also unfortunate that the appellants did not appeal against that order.

Arising from that order, the respondent received a letter dated 19 July 1997 from the appellants informing them that an inquiry was to be held on 3 August 1997 (hereinafter referred to as "the second inquiry"). On 3 August 1997 the respondent informed the appellants that the respondent did not receive the Form E notice and made objection to the inquiry. The respondent also raised objection to the acquisition itself. The third objection raised by the respondent was in respect of the procedure. As a result, the inquiry was adjourned to 4 August 1997. On 4 August 1997 the respondent again raised objection against the acquisition. This was overruled by the Land Administrator and he

proceeded with the inquiry. At the end of it the Land Administrator made an award of RM25,000 per acre. Form H dated 6 August 1997 was served on the respondent on 10 August 1997.

As a result of that the respondent took up another application (hereinafter referred to as "the second application"), to quash the decision of the Land Administrator on the ground that the award was made more than two years after the date of the acquisition. The learned judge of the High Court, Alor Setar allowed the second application. The appellants appealed against that decision.

The respondent argued that the two-year period started to run from 3 August 1995. Section 8(4) of the Act provides that if no award is made within two years from the date of acquisition, then the acquisition lapsed. My learned brother, Gopal Sri Ram JCA, in his judgment has explained s. 8(4) of the Act. There is no necessity for me to repeat it here.

It is the contention of the respondent that the time period began to run from 3 August 1995 and expired on 3 August 1997. Section 14(1) of the Act provides that a written award in Form G must be prepared by the Land Administrator. In the present case Form G was dated 6 August 1997, therefore the award made by the Land Administrator was more than two years after the date of acquisition. As such the acquisition lapsed and ceased to have effect as provided for by s. 8(4) of the Act. Section 14(1) provides as follows:

> 14. **Award of the Land Administrator**
>
> (1) Upon the conclusion of the enquiry under section 12 relating to any scheduled land the Land Administrator shall prepare a written award under his hand in Form G, in which he shall, in respect of each separate area of scheduled land, make a separate award in respect of each person whose interest in the land has been established in such enquiry.

Section 8(4) of the Act provides as follows:

> 8. **Declaration that land is required for a public purpose ...**
>
> (4) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the Land Administrator has not made an award under section 14(1) within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of such land or such part of the land shall terminate and be of no effect.

The respondent would be correct when he said that the period of two years had expired when the award was made on 6 August 1997. In the present appeal, from the facts given in the affidavit, it is clear to me that an inquiry was held on 18 October 1995 and an award was made by the Land Administrator whereby the registered proprietors were represented at the inquiry and subsequently made his objection in respect of the award. From the facts available I am of the view that at that material time the respondent was not the registered proprietor. The learned judge in the first application then declared the inquiry and the award made thereunder to be null and void on the ground that the respondent was not served with the Form E notice. The relevant part of the order dated 3 August 1996 reads as follows:

> ... MAKA ADALAH PADA HARI INI DIPERINTAHKAN BAHAWA:
>
> a. Suatu Perintah Certiorari dibenarkan ... seluruh keputusan yang dibuat oleh Pentadbir Tanah Kedah ... yang diputuskan pada 18hb. Oktober 1995 ... dan bahawa keputusan perbicaraan .... dan jumlah pampasan yang terdapat di dalam Borang H bertarikh 18hb. Oktober, 1995 ... ditolak dan dibatalkan dan diisytiharkan batal dan tidak sah;

Based on this order, the learned judge in the second application concluded that no inquiry and award were made from the date of acquisition. My learned brother, Gopal Sri Ram, JCA is of the same view. I would be of the same view if the learned judge in the first application could make such a declaration in the light of the Land Acquisition Act 1960. There is no doubt that there was no appeal against that order, but that order is relevant for the purpose of this appeal to determine the time limit for the award made. It was the respondent's contention that because of that order, it is deemed that no inquiry or award had been made. On the other hand, the appellants contended that there was an inquiry and award made but due to irregularity it was declared null and void on 3 August 1996. As stated earlier, my learned brother Gopal Sri Ram, JCA favoured the respondent's contention and confirmed the decision of the learned judge in the second application. With the greatest respect, I beg to differ from my learned brother in view of the provisions of the Act. The question arising from this was whether the court is empowered under that Act to declare any award to be null and void. It is clear from the evidence that the challenge to the first inquiry and the award made thereunder was solely on the ground that the respondent was not served with the Form E notice of the inquiry held on 18 October 1995. The relevant provisions in respect of this are ss. 10, 11 and 12 of the Act which read as follows:

10. **Land Administrator to commence proceedings.**

(1) The Land Administrator shall, having completed the action required by section 9, commence proceedings for the acquisition of the land by giving public notice in Form E in the manner prescribed by section 52, and by fixing the date of an inquiry for the hearing of claims to compensation for all interests in such land.

(2) **The Land Administrator shall not hold such inquiry earlier than twenty-one days after the date of publication of the notice referred to in subsection (1).**

(3) A copy of the schedule to the declaration in Form D gazetted under section 8(2) shall be appended to every notice in Form E.

11. **Service of notices.**

(1) **The Land Administrator shall, in addition to giving public notice as required by section 10(1), in respect of all scheduled land specified in every notice in Form E, serve copies of such notice in the manner prescribed by section 53, upon -**

(a) the occupier of such land;

(b) **the registered proprietor of such land, where he is not the occupier thereof;**

(c) **any person having a registered interest in such land;**

(d) any person whom he knows or has reason to believe to be interested therein:

Provided that no omission or failure to serve such notice upon any person falling under paragraph (b) or (c) shall invalidate any enquiry held pursuant to the notice or any award made upon the conclusion of the enquiry if, by reason of damage or deterioration of the register document of title to such land, such person cannot be ascertained.

(2) (Not relevant to the present appeal).

12. **Enquiry by the Land Administrator**

(1) On the date appointed under section 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case, according to the consideration set out in the First Schedule.

(2) **The Land Administrator shall also enquire into the respective interests**

of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the scheduled land, and into the objections, if any, made by any interested person to the area of any scheduled land.

(3) (Not relevant). (emphasis made).

From the evidence it is clear to me that on 3 August 1995 the respondent was not the registered proprietor or the occupier of the said land. On that date the respondent had only entered into a sale and purchase agreement with the registered proprietors of the said land. There was no evidence to show that the sale and purchase agreement was forwarded to the Land Office. In my view this could not be done because the full purchase price was not paid. This can be seen from the supplementary agreement dated 18 August 1995 whereby the respondent was given extension of time to pay the balance of the purchase price. Further, in order for the sale to be effective, it had to be sanctioned by the court. That sanction had not been obtained at the time when the acquisition took place. It was only obtained on 10 January 1996. Thus at the time when the acquisition took place on 3 August 1995 and on the date the first inquiry was held on 18 October 1995 the respondent could not be the registered proprietor of the said land.

Was the respondent an occupier of the said land at the time of the acquisition or at the latest at the time when the first inquiry took place? This is a question of fact and the burden is on the respondent. There was no evidence whatsoever to show that the respondent was an occupier of the said land when the first application or even at the time the second application was made. As such the respondent could not be termed as an occupier of the said land when the acquisition took place or at the time when the first inquiry was held.

The third question to be asked, was the respondent having a registered interest on the said land? As I have said earlier, the respondent was not registered as the proprietor of the said land when the acquisition took place. I have gone through the land title and it can be seen that the respondent registered its caveat only on 9 September 1995. As such on 3 August 1995 when the acquisition took place, the respondent had no registered interest on the said land.

It is clear to me at the time when the acquisition took place the respondent could not come under ss. 11(a), (b) or (c) of the Land Acquisition Act. As such there was no obligation on the part of the Land Administrator to serve the Form E notice on the respondent. The respondent had no right to complain on the non-service of the notice of the first inquiry upon them. In my view the respondent had no *locus standi* when the acquisition took place and as such no right to file the first application. The Land Administrator had not contravened any provision of the Act when he did not serve Form E notice

on the respondent at the time the inquiry was held. It is clear to me the representative of the registered proprietors was served with Form E notice because he was present at the inquiry and he had made his objections.

Assuming that I am wrong above and that the respondent had established that it had registered interest or any interest at all on the said land, it is clear under the Act that the non-service of Form E notice cannot invalidate the award. Section 56 of the Act gave the necessary protection to the Land Administrator for such omission or failure. Section 56 of the Act provides:

> 56. **Omission, etc, not to invalidate proceedings.**
>
> No omission or failure to publication of a notice or to make due service upon persons and parties interested as provided in this Part shall invalidate any proceedings under this Act.

The part stated in this section is Part VI of the Act. Part VI is in respect of service of all notices under the Act which include services under s. 11(1) of the Act. From the affidavits and the documents tendered at the hearing of the second application it is clear to me, as I have stated earlier, that the respondent challenged the first inquiry and the award made thereunder solely on the ground that the respondent was not served with the Form E notice as required by s. 11(1) of the Act. Even if the respondent was right in claiming that it had registered interest on the land and was not served with Form E notice, in my view s. 56 gave the necessary protection to any inquiry held and the award made thereunder by the Land Administrator solely on the ground of non-service of Form E notice to any party. The court has no power to declare any inquiry and any award made thereunder to be null and void solely on the ground that a party was not served with Form E notice. At the most the court could only declare that the inquiry held was irregular and ought to be set aside and ordered a fresh inquiry to be held. It might be that s. 56 was not brought to the attention of the learned judge in the first application. Whatever it was, I am of the view that an award once made cannot be declared null and void.

I am not suggesting for the moment that the court has no power to invalidate any acquisition, but any invalidation must be done in accordance with the Act. An example is s. 8(4) of the Act which has been cited earlier which in effect was the basis of the second application (the present appeal). Failure to comply with s. 8(4) of the Act will warrant the acquisition to be declared null and void. Whatever had been done pursuant to any notice of acquisition will render it to be ineffective. In my view, the curbing of the power of the court to declare any acquisition to be null and void by the Act was to limit any interference by the court of any acquisition under the Act. The Act was

enacted to enable and to assist the Government to acquire alienated lands to be developed for the good of the country. Only in exceptional cases, an acquisition can be declared null and void. The Act has already provided remedy to the landowner or any person having interest on the said land which is in the form of adequate compensation. For that purpose it is a requirement that an inquiry in respect of compensation is to be held whereby the landowner or any person having interest in the land can present his case to obtain an adequate compensation. Recognising the fact in some cases the registered proprietor and the person having interest in the land are difficult to trace whereby the notices may not be served on them, the Act enacted s. 56. The whole purpose of that section is to regularise any irregularity arising from the inquiry and the award made thereunder which will not affect the acquisition itself. Otherwise, the Government is held to ransom just because of irregularities. The Act also provides for notices to be served by other means such as posting them on the notice boards in the land office, local council and on the land itself. There was no complaint by the respondent at the time of the hearing of the first application that Form E notice was not posted. Because of these safeguards, s. 56 of the Act makes it clear that any defect or irregularity in the service of the notices will not invalidate any inquiry and the award made thereunder. The defect, if any, is a mere irregularity, for which the inquiry and the award made thereunder could be set aside and a new inquiry is to be held. It is clear from the provisions of the Act that the purpose of the inquiry is to determine the compensation to be awarded and to whom the compensation is payable. For that purpose in some cases there is no necessity to hold a fresh inquiry because the registered proprietors or persons having interest on the land can raise an objection against the award and request the matter be referred to the High Court. To me, it is clear in the present case the Land Administrator had complied with the provisions of the Act when he called for the first inquiry and made the award and the notice of hearing was served on the registered proprietors which was evidenced by the presence of their representative (the trustee). That being the case the award could not be set aside. The only remedy was the proprietors to raise their objections which they did through their representatives. Even if there were irregularities because of s. 56, the award could be set aside and a fresh inquiry ordered. In my view, a court, because of s. 56 of the Act, cannot declare an award to be null and void if the award is handed down within the two year time frame. For that reason I am of the view the effect of the order in the first application was that there was irregularity in the inquiry, for which it should be set aside and a fresh inquiry was to be held. The time starts from the date of the order.

My learned brother Gopal Sri Ram JCA, in his judgment (to which I was given the opportunity to read the draft) said:

> In the present case, the two year period commenced to run from August 3, 1995. Although the first award was made within the statutory time limit, the quashing of the first inquiry and the resultant award by the orders of *certiorari* issued by Mohd Ariff Othman J, resulted in there being no award at all. Consequently, it was incumbent upon the second appellant to have an inquiry and make an award before the expiry of two years from August 3, 1995, being the date of publication of the declaration. In other words, the award ought to have been made on or before August 3, 1997. However, the second award; the only valid award in the present case; was made only on August 6, 1997. This was more than two years after the date of the declaration. It follows that the declaration made under section 8(1) of the Act in the present case lapsed and ceased to have any effect as at August 3, 1997 because no valid award had been made before that date. ...

I agree with what had been said by my learned brother if the first award had been validly declared null and void. As I have said earlier, under the Land Acquisition Act 1960, the court has no power by virtue to s. 56 to declare an inquiry and the award made thereunder to be null and void solely on the ground of non-service of the notice in Form E. At the most non-compliance will render the inquiry to be irregular and the award made thereunder ought to be set aside for which a fresh inquiry to be held. The time to hold the fresh inquiry should run from the date when the court declared the first inquiry and the award made thereunder to be irregular, ie, on 3 August 1996. Thus when the fresh inquiry (the second inquiry) was held on 3 August 1997, adjourned to 4 August 1997 and the award was handed down on 6 August 1997, those were done and completed within the time limit.

Assuming that my learned brother and the learned judge in the second application is right in that the order of the learned judge in the first application was effective, it was contended by the appellants that the time limit was exceeded by a few days (three days). The learned State Legal Adviser, representing the appellants, urged the court to apply the principle in *Pemungut Hasil Tanah, Kuantan v. Oriental Rubber & Palm Oil Sdn. Bhd.* [1986] 1 MLJ 39 and not to declare the acquisition to be null and void.

In my view, this is a case where a genuine mistake had been made by the Land Administrator. This is not a case where the Land Administrator had totally ignored the provisions of the Act in making the award. The Land Administrator had taken all the necessary steps to comply with the provisions of the Act. He made the first award after holding the inquiry within two months after acquisition, but the inquiry and the award made thereunder was declared null and void some ten months later. It is not clear when this order

was served on the Land Administrator. This is one of the rare occasions when an award made by a Land Administrator had been declared null and void. Being a layman, even if the order was served immediately on him, the Land Administrator would not know the effect of the order. There is no evidence to show the effect of the order was explained to him. For that reason he took his time to hold the second inquiry which was to be held on 3 August 1997. That day happened to be exactly two years from the date of the acquisition. The solicitor for the respondent was of no help at all. Instead of reminding the Land Administrator that that day would be the last day the award to be handed down he made objections to the inquiry which forced the Land Administrator to postpone the inquiry. As I see it he was the only legally qualified person there and in my view the only person who knew that the two year limit was due to expire on that day. He did it again on 4 August 1997. His motive of raising the objections was questionable. It appears to me that he did it on purpose to delay the award being made on 3 August 1997. If the inquiry and the award was made on 3 August 1997 there would be no question the award was made in time. Because the award was made three days after the expiry of the two year limit, the respondent took full advantage of it and applied for the acquisition to be declared null and void. Taking into consideration of the facts enumerated above I am of the view that this is a fit and proper case for the court to use its discretion not to declare the acquisition as null and void.

It is not disputed that the acquisition date in respect of the said land was 3 August 1997. As my learned brother has stated that was the effective date. Arising from this, I have my doubt as to the *locus standi* of the respondent not only to institute the first application but also the second application. As I have stated earlier, as on that date the respondent was not the registered proprietor of the said land neither was he the occupier of the said land. I have expressed my doubt as to his interest on the said land because the full payment of the purchase price had not been made and there was no approval from the court to sanction the sale of the said land. The only thing that existed was the sale and purchase agreement with the deposit paid. As from 3 August 1997 until the declaration of the acquisition by the learned judge in the second application, the acquisition was effective. There was no challenge to the acquisition itself. The respondent was not the registered proprietor and as such he had no *locus standi* to institute the first application. In the meantime after the judge in the first application declared the award to be null and void, the respondent in all haste took all necessary actions to ratify the sale, which in my mind could not be done because the acquisition was still effective and valid. Even when the second application was made I am of the view that the respondent has no *locus standi.* There is no doubt that the respondent had taken

steps to effect the sale and purchase and had its name registered on the title. As can be seen from one of the affidavits it is clear that the registering of it was done at the Alor Setar Land Office and not at the Kuala Muda (Sungai Petani) Land Office where the land is situated and the register was kept. To me what was done was ineffective because the acquisition was still effective when all of those things were done by the respondent. It could be said that the respondent had the *locus standi* because it had an interest on the land. As I have said earlier merely on the ground that a sale and purchase agreement had been entered without the payment of the full price and without obtaining the sanction of the court on the sale would not confer the respondent any interest on the land. Even if the respondent has any interest on the land, I am of the view the respondent had no *locus standi* to challenge the acquisition because he was not the registered proprietor. My reading of the Act is that a person having any interest on the land can only challenge the award. For these reasons I am of the view that the respondent has no *locus standi* to bring the first application and the second application.

For the reasons I have stated above, the appeal should be allowed with costs here and the court below. The order of the learned judge in this appeal should be set aside and the application by the respondent should be dismissed.